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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CHEYVONNE ANTOINE BRYANT, Defendant and Appellant.	B195777 (Los Angeles County Super. Ct. No. BA213490)

APPEAL from a judgment of the Superior Court of Los Angeles County. Kathleen Kennedy-Powell, Judge. Affirmed.

Lisa M. Bassis for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr. and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

Cheyvonne Antoine Bryant, also known as Robert Goodwin, appeals from the judgment entered upon his conviction by jury of first degree murder (Pen. Code, § 187, subd. (a)).[1] The jury found to be true the special circumstance allegation that appellant committed the murder during commission of a robbery (§ 190.2, subd. (a)(17)) and the firearm use allegations (§ 12022.53, subds. (b), (c) & (d)). The trial court sentenced appellant to state prison for life without the possibility of parole plus 25 years to life for the firearm use enhancement. Appellant contends that (1) the prosecutor tainted the trial by vouching for the credibility of witnesses, thereby depriving appellant of his federal constitutional rights to due process and a fair trial, and (2) the trial court violated his federal constitutional rights by denying his posttrial, presentence motion for appointed counsel.

We affirm.

FACTUAL BACKGROUND[2]

Between 2000 and January 2001, appellant initiated four or five meetings with Patrick Green (Green), an American Express Global Security manager responsible for overseeing American Express losses. Appellant was seeking $10,000 in return for giving American Express information and assets of the credit card operation run by Adolphus Miller (Miller), which had defrauded American Express out of more than $1 million. During the meetings, appellant said that he had worked for Miller, but had had a falling out with him when Miller "disrespected" appellant in front of others. Appellant wanted to retaliate by disrupting Miller's organization.

On January 23, 2001, at the final meeting with appellant, Green brought John Shirle, a United States Secret Service special agent assigned to protect the President of the United States and his family. Shirle had worked on counterfeit credit card and check fraud cases and had been a Los Angeles police officer before joining the Secret Service.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Because appellant does not raise a sufficiency of the evidence claim, we provide only a brief statement of the facts.

At the meeting, he posed as an American Express investigator because appellant did not want to deal with law enforcement.

According to Shirle, appellant said the following at that meeting. Appellant arranged for a friend to do business with Miller, and his friend allegedly cheated Miller out of $60,000. Miller blamed appellant for setting him up and threatened to kill him. Appellant decided to kill Miller first. Appellant arranged a meeting with Miller under the guise of wanting to "smooth things over." He drove to the meeting location and waited in his car for Miller, a firearm with a silencer on his lap. When Miller arrived and walked toward appellant's car, Miller became nervous, returned to his car and drove away. Appellant said that Miller got lucky because appellant was going to "cap his ass," meaning shoot him.

One week after the last meeting with Green and Shirle, Miller went to the workplace of Bethene Knight (Knight). They were longtime friends and sometimes romantic partners. Miller told her that he needed her help and drove her to her house. Knight lived upstairs and her daughter, D'Lon White (White), and White's girlfriend, Brenda Baker (Baker), lived downstairs. Miller and Knight went to Knight's bedroom where Miller emptied two bags of cash on the bed, which they counted. There was at least $120,000.

Later, Knight received a telephone call from appellant from a phone in White's bedroom downstairs. Knight came downstairs, into the living room, and sat with appellant, who said that he knew she and Miller were counting money upstairs and that he was going to rob Miller. Appellant showed her a gun.

Twenty minutes after appellant arrived, Miller came downstairs carrying a bag. He went outside and put the bag in his car, returned to the house and sat on the couch with appellant. Knight left the room and went to her daughter's room, upset. She told White and Baker that appellant was "acting crazy" and talking about robbing Miller.

While Knight was in her daughter's room, they heard fighting in the living room. They ran to the living room and saw appellant with a gun pointed at Miller's head. Miller was sitting on the couch. Knight and her daughter started screaming. Appellant

repeatedly told Miller that he would kill him if did not give appellant what he wanted. White and Knight ran from the room, as Miller pleaded for his life. Within two minutes, there was a gunshot and loud slapping sound, "like a pistol whip." A car "skid[ded] off" from the front of the house. Appellant was gone, and Miller was lying on the floor in the living room, dead from a single gunshot wound to the chest. His bag of money and car keys were never found.

DISCUSSION

I. Prosecutorial misconduct

Shirle testified that appellant told him at the January 23, 2001, meeting that he hated Miller, had a dispute with him, decided to kill him and unsuccessfully attempted to do so. Green did not testify to these facts and did not include them in his reports. Appellant attempted to impeach Shirle by asking why his recollection was so different from Green's.

In closing, the prosecutor argued that Shirle's testimony regarding appellant's desire and attempt to kill Miller established appellant's motive for the murder. In his closing, appellant sought to capitalize on the absence of such testimony by Green, arguing that Shirle was lying because Green was at the meeting and did not hear appellant make those statements.

In rebuttal, the prosecutor made the statements that appellant now challenges. The prosecutor argued that Shirle was a special agent protecting the President and was therefore honest and credible. She also argued, "Now, if there was something about Special Agent John Shirle that makes you say 'Man, there's something fishy about that guy. Can't put my finger on it, but I know for a fact I can't trust him' . . . and I think we can all agree, that none of us got that feeling when Special Agent Shirle testified. That he did not come off as a liar, that he did not come off as a perjurer."[3]

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[3] The full text of the portion of the argument appellant now challenges is as follows: "Now, I think this is where the defense goes too far. Special Agent John Shirle is a liar. We have a liar and a perjurer who is working the presidential detail, protecting the President of the United States and his family. That's the defense position. [¶] You had a

Appellant contends that the prosecution's statements about Shirle's credibility constituted prosecutorial misconduct. He argues that "appellant's conviction was tainted when the prosecutor improperly vouched for Secret Service Agent Shirle's credibility and argued for conviction based on the honesty of the agent rather than facts."

Respondent contends that appellant forfeited this claim by failing to object in the trial court and request an admonition, and, even if not forfeited, it is meritless. We agree with respondent.

Generally, "'"a defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion—and on the same ground—the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety."' [Citation.] This general rule, however, does not apply if a defendant's objection or request for admonition would have been futile or would not have cured the harm caused by the misconduct; nor does it apply when the trial court promptly overrules an objection and the defendant has no opportunity to request an admonition. [Citation.]" (*People v. McDermott* (2002) 28 Cal.4th 946, 1001; see also *People v. Ward* (2005) 36 Cal.4th 186, 215.) Appellant failed to object and request an admonition in the trial court

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chance to get a measure of the man that Mr. Shirle is when he came into this courtroom and he sat here. You had a chance to see and gauge his credibility and his character. [¶] Now, if there was something about Special Agent John Shirle that makes you say 'Man, there's something fishy about that guy. Can't put my finger on it, but I know for a fact I can't trust him' . . . and I think we can all agree, that none of us got that feeling when Special Agent Shirle testified. That he did not come off as a liar, that he did not come off as a perjurer. [¶] And this is what the defense is saying, that he lied about hearing the defendant threaten Mr. Miller, that he lied about the details of the attempt to kill Mr. Miller. [¶] Now, think about that. That was some excruciating detail. The defense is saying that Special Agent John Shirle lied about every single fact that he related to you that the defendant told him that evening. [¶] He lied about the defendant saying he and Mr. Miller were going to meet to mend the fences. He lied about saying the defendant said he had a pistol. He lied about saying the defendant said he had a silencer. He lied when he said the defendant said 'Butch got lucky that day,' and he lied when he said the defendant said 'I was going to cap his ass.' [¶] Now, he lied about not being in a conspiracy because he's a liar, he's a perjurer and he's a conspirator. That's what the defense wants you to believe about Special Agent John Shirle."

and has failed to show that an exception applies. Consequently, he may not now raise this claim.

If this claim had been preserved for appeal, we would nonetheless reject it. "'"'A prosecutor's . . . intemperate behavior violates the federal Constitution when it comprises a pattern of conduct 'so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process.'"' [Citations.] Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves '"'the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury.'"'" (*People v. Samayoa* (1997) 15 Cal.4th 795, 841; see also *People v. Ochoa* (1998) 19 Cal.4th 353, 427.) To support a claim of prosecutorial misconduct, a defendant must show either a pattern of egregious conduct or employment of persuasion methods so deceptive as to create a reasonable likelihood that such behavior prejudicially affected the jury. The misconduct need not be intentional. (*People v. Bolton* (1979) 23 Cal.3d 208, 214.) To prevail on a claim of prosecutorial misconduct based upon remarks to the jury, the defendant must show that it is reasonably likely that the jury understood or applied the challenged comment in an improper or erroneous manner. (*People v. Welch* (1999) 20 Cal.4th 701, 753.)

"'It is misconduct for prosecutors to bolster their case "by invoking their personal prestige, reputation, or depth of experience, or the prestige or reputation of their office, in support of it." [Citation.]'" (*People v. Riggs* (2008) 44 Cal.4th 248, 302.) Improper vouching "'"involves an attempt to bolster a witness by reference to facts outside the record."'" (*People v. Huggins* (2006) 38 Cal.4th 175, 206.) For example, a prosecutor referring to his or her own experience, or comparing a defendant's case to others the prosecutor knows about is improper. (*Id.* at p. 207.) "It is not, however, misconduct to ask the jury to believe the prosecutor's version of events as drawn from the evidence." (*Ibid.*) "'[S]o long as a prosecutor's assurances regarding the apparent honesty or reliability of prosecution witnesses are based on the "facts of [the] record and the inferences reasonably drawn therefrom, rather than any purported personal knowledge or

belief," [his] comments cannot be characterized as improper vouching. [Citation.]'" (*People v. Ward*, *supra*, 36 Cal.4th at p. 215.)

Applying these principles to the prosecutor's challenged statements here reveals no prosecutorial misconduct because (1) there was no improper vouching, (2) even if there was improper vouching, it did not """"infect the trial with such unfairness as to make the conviction a denial of due process""""" (*People v. Ochoa*, *supra*, 19 Cal.4th at p. 427), and (3) it did not reflect a pattern of egregious conduct (*ibid.)* or persuasion methods so deceptive as to create a reasonable likelihood that the jury was prejudicially affected.

Appellant's principal argument is that the prosecutor vouched for Shirle's credibility by referring to Shirle's assignment to the presidential detail as a Secret Service agent. Appellant claims this was based on matters outside the record. He is wrong. Shirle's assignment to the presidential detail is in evidence. The prosecutor was allowed to refer to it and to all reasonable inferences deducible from it. (*People v. Willard* (1907) 150 Cal. 543, 552 ["Counsel have a right to present to the jury their views of the proper deductions or inferences which the facts warrant. Their reasoning may be faulty, their deductions from the premises illogical, but this is a matter for the jury ultimately to determine, and not a subject for exception on the part of opposing counsel"]; *People v. Younger* (2000) 84 Cal.App.4th 1360, 1384.) A prosecutor is given wide latitude during argument. (*People v. Ward*, *supra*, 36 Cal.4th at p. 215.) It is reasonably inferred from Shirle's assignment to the President that his background and character would have been thoroughly investigated and Shirle found to be honest and trustworthy. Further, the prosecutor's comments were made in rebuttal to appellant's assault on Shirle's honesty and integrity. "[A] prosecutor is justified in making comments in rebuttal, perhaps otherwise improper, which are fairly responsive to argument of defense counsel and are based on the record." (*People v. Hill* (1967) 66 Cal.2d 536, 560.)

The prosecutor said that "I think we can all agree, that none of us got that feeling [that Shirle could not be trusted], when Special Agent Shirle testified." This, too, did not constitute vouching for Shirle's credibility, for it did not refer to facts outside the record.

Shirle was simply alluding to what the jury had observed when Shirle was on the stand testifying. The fact that the prosecutor used the words "we" and "us" does not alter our conclusion. In *People v. Huggins*, *supra*, our Supreme Court found the prosecutor's statement, "'None of this can be true. Please believe *me*. He has lied through his teeth in trying to sell this story to you" (italics added), did not constitute vouching. (*People v. Huggins*, *supra*, 38 Cal.4th at pp. 206-207.) Even, the "'fact that comments upon the testimony of certain witnesses made in an argument have been couched in the first person does not of itself render them improper.'" (*People v. Ward*, *supra*, 36 Cal.4th at p. 216.) It is unlikely the jury would have understood the prosecutor to be referring to anything outside of the record, known to the prosecutor and not in evidence, rather than simply calling on the jury to recall the impression made by Shirle on the witness stand.

Further, these unremarkable, isolated and noninflammatory comments by the prosecutor do not reflect a pattern of misconduct so egregious as to infect the trial with unfairness nor can they be characterized as "deceptive or reprehensible." (*People v. Samayoa*, *supra*, 15 Cal.4th at p. 841.)

Even if the prosecutor's challenged statements constituted misconduct, they were harmless in that it is not "reasonably probable that a result more favorable to the appealing party would have been reached" had the prosecutor not made them. (*People v. Watson* (1956) 46 Cal.2d 818, 836*; People v. Garcia* (1984) 160 Cal.App.3d 82, 93-94, fn. 12 [prosecutorial misconduct in exposing a jury to improper factual matters usually tested under the *Watson* standard]; see also *People v. Medina* (1990) 51 Cal.3d 870, 896.) The evidence against appellant was strong. He told Shirle and Green that he had a falling out with Miller, hated him and wanted to kill him and tried to do so. This provided compelling evidence of appellant's motive to murder Miller, just a week before the murder. Five witnesses, all of whom knew appellant, placed him at the location of the murder at the time of the murder, Knight and White saw appellant pointing a gun at Miller's head, Miller begging for his life, and heard a gunshot seconds later. They then heard a car speed away. Appellant's prints were found at the shooting scene in locations

consistent with the witnesses' observations. Miller's car keys and money were never located.

Further, the challenged statements by the prosecutor were brief and inconsequential in the context of the entire trial and approximately 70 pages of closing argument.

Finally, the jury was instructed "not [to] be influenced by sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling" (CALJIC No. 1.00), that "[s]tatements made by the attorneys during the trial are not evidence" (CALJIC No. 1.02) and that it must "decide all questions of fact in this case from the evidence received in this trial and not from any other source" (CALJIC No 1.03). These instructions focused the jury on the evidence and its role in evaluating it. We assume the jurors followed these instructions. (*People v. Talhelm* (2000) 85 Cal.App.4th 400, 409.)

II. Relinquishment of self-representation

On March 24, 2004, trial of this matter resulted in a mistrial. Appellant was represented at the trial by Douglas Goldstein, Los Angeles County Deputy Public Defender. On April 20, 2004, Judge Maureen Duffy-Lewis denied appellant's *Marsden*[4] motion to relieve Goldstein. On March 1, 2005, Judge Charlene Olmedo denied appellant's second *Marsden* motion to relieve Goldstein. On May 2, 2005, Judge Ann Jones granted appellant's *Faretta*[5] motion, relieving Goldstein and, on May 17, 2005, appointed a panel attorney as standby counsel. Just four months later, on September 28, 2005, Judge Jones granted appellant's request to relinquish his in propria persona status and to substitute retained counsel James P. Lindeman. On December 14, 2005, in the middle of the prosecution's case-in-chief, in appellant's retrial before Judge Kathleen Kennedy-Powell, appellant fired Lindeman. The trial court again permitted appellant to represent himself, but denied his request for standby counsel. On December 19, 2005, appellant was convicted as charged.

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4 *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

5 *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

For nearly a year after his conviction, appellant obtained seven or more continuances to file a motion for new trial and for the sentencing hearing. On December 1, 2006, the trial court granted appellant a final one-week continuance, with a warning that no further continuances would be given.

On December 8, 2006, the trial court heard and denied appellant's motion for new trial. When it asked if appellant was ready for sentencing, he first requested to again relinquish his in propria persona status and obtain appointment of counsel for sentencing. The trial court denied the request, finding it to be untimely.

Appellant contends that the trial court abused its discretion when it denied his request to relinquish self-representation and to obtain reappointment of counsel, thereby depriving him of his constitutional right to counsel. He argues that the trial court's sole ground for denying his request was that it was untimely, though it was not untimely and any delay occasioned by a continuance would cause little disruption. This contention is without merit.

A criminal defendant is entitled under the federal and state Constitutions to the assistance of counsel at all critical stages of the proceedings. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15; *Gideon v. Wainright* (1963) 372 U.S. 335, 344–345.) Sentencing is a critical stage of the proceedings. (*Mempa v. Rhay* (1967) 389 U.S. 128, 134.) A federal constitutional right of a defendant to self-representation is implied in the Sixth Amendment. (*Faretta, supra,* 422 U.S. at p. 819.) This is because the Sixth Amendment gives a defendant, whose life and future are at stake, the right to control his own fate and not be forced to use counsel who may not present the case as the defendant wishes. (*People v. Windham* (1977) 19 Cal.3d 121, 130 (*Windham*).)

"[O]nce defendant ha[s] proceeded to trial on a basis of his constitutional right of self-representation, it is thereafter within the sound discretion of the trial court to determine whether such defendant may give up his right of self-representation and have counsel appointed for him." (*People v. Elliott* (1977) 70 Cal.App.3d 984, 993 (*Elliott*); see also *People v. Gallego* (1990) 52 Cal.3d 115, 164 [finding *Elliott* factors relevant and helpful in determining midtrial request for appointment of counsel, but stating that those

factors "'are not absolutes, and . . . it is the totality of the facts and circumstances which the trial court must consider in exercising its discretion as to whether or not to permit a defendant to again change his mind regarding representation in midtrial'"]; see also *People v. Smith* (1980) 109 Cal.App.3d 476, 484.)

In order to exercise that discretion, the trial court should "inquire *sua sponte* into the specific factors underlying the request thereby ensuring a meaningful record in the event that appellate review is later required." (*Windham*, *supra*, 19 Cal.3d at p. 128; *Elliott*, *supra*, 70 Cal.App.3d at p. 993.) The failure to conduct a proper *Windham* hearing, however, is not necessarily fatal to the trial court's denial of a motion to relinquish self-representation. (See *People v. Dent* (2003) 30 Cal.4th 213, 218; see also *People v. Scott* (2001) 91 Cal.App.4th 1197; *People v. Perez* (1992) 4 Cal.App.4th 893, 905-906, fn. 10; *Windham*, *supra*, at p. 129, fn. 6 ["We decline to mandate a rule that a trial court must, in all cases, state the reasons underlying a decision to deny a motion for self-representation which is based on nonconstitutional grounds"].)

While the trial court here only articulated the fact that appellant's request to relinquish self-representation was untimely as the basis for denying the motion to relinquish self-representation, it was not required to review on the record each *Elliott* factor. "The standard is whether the court's decision was an abuse of its discretion under the totality of the circumstances [citation], not whether the court correctly listed factors or whether any one factor should have been weighed more heavily in the balance." (*People v. Lawrence* (2009) 46 Cal.4th 186, 196.)

Some of the factors to be considered in deciding the propriety of denying a motion to relinquish self-representation are (1) the defendant's prior history with regard to substituting of counsel and relinquishing self-representation and re-obtaining counsel, (2) the reasons given for the request, (3) the length and stage of the proceedings when the request is made, (4) disruption and delay which reasonably might be expected to ensue if the motion is granted, and (5) the likelihood and effectiveness of the defendant's continued self-representation. (*Elliott, supra,* 70 Cal.App.3d at pp. 993–994; *People v. Gallego*, *supra*, 52 Cal.3d at p. 164.)

Appellant's prior history here demonstrated multiple *Marsden* motions and requests for self-representation. A defendant's proclivity to seek changes in counsel status will generally weigh heavily against finding an abuse of discretion for denying a request to relinquish self-representation. (*People v. Lawrence*, *supra*, 46 Cal.4th at p. 196.)

The justification given by appellant for seeking counsel was weak. While he said that he "wanted to fully understand what's going on here," that explanation rings hollow. Appellant gave no indication what specifically he was concerned about, nor did he state that he did not substantially understand what was going on. The thrust of appellant's request appears to be his belief that he had a right to counsel, and for that reason wanted counsel.

Appellant's request was made late in the proceedings, at the last minute before sentencing, after numerous continuances, and after being warned that no further continuances would be given. The jury verdicts had been rendered nearly a year earlier. (See *People v. Lawley* (2002) 27 Cal.4th 102, 151 [denied motion to relinquish self-representation where motion made at the commencement of penalty phase more than two weeks after the verdicts].) During that year he had received more than a half-dozen continuances to file a motion for new trial. Not once during that entire time did he indicate a desire to withdraw his *Faretta* waiver. At the court hearing prior to the sentencing hearing, the trial court warned appellant that no further continuances would be given. Even at the beginning of the sentencing hearing, appellant said nothing about wanting counsel appointed. Instead, he waited until after his motion for new trial was denied, when the trial court asked if he was ready to proceed to sentencing, to request appointment of counsel. While the inconvenience and delay that would be occasioned by granting the request would not have been as burdensome as if made before trial, that does not negate the inconvenience, delay and costs that granting the motion would have occasioned.

Finally, there is nothing to suggest that appellant would have been ineffective in continuing his self-representation for several reasons. (*People v. Lawley*, *supra*, 27

Cal.4th at p. 150 [quality of self-representation did not compel granting motion to relinquish].) Appellant did a credible job in representing himself during trial. In fact, the trial court commented after trial, "I want to compliment both counsel on their arguments. I thought both of you did an excellent job." Further, at an earlier hearing, the trial court gave appellant advice on what he could do at the sentencing hearing. It stated: "You do have the right to make a statement of your own. And anybody that you want to write any letters on your behalf to the court, you certainly can direct letters to me if there's anything you feel I should know about you and your background."

Further, appellant's sentence was mandatory. The jury found the special circumstance to be true that appellant committed the murder in the course of a robbery. Section 190.2 provides that the only sentences that can be imposed upon the finding of the special circumstance are death or life without the possibility of parole. Section 1385.1 explicitly removes any statutory discretion for the trial court to strike the special circumstance.[6] Hence, there was little that could be done to reduce appellant's sentence from life without the possibility of parole, and little advantage to be gained by appointment of counsel at that point.[7]

Even if the trial court abused its discretion in denying appellant's request for counsel, it is not reasonably probable that had counsel been appointed a result more

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[6] Section 1385.1 provides: "Notwithstanding Section 1385 [discretion to dismiss in furtherance of justice] or any other provision of law, a judge shall not strike or dismiss any special circumstance . . . bound by a jury or court as provided in Sections 190.1 to 190.5, inclusive."

[7] While the life sentence without the possibility of parole under section 190.2 could not be stricken, it was still subject to a constitutional challenge that it constituted cruel and unusual punishment. (*People v. Mora* (1995) 39 Cal.App.4th 607.) However, establishing such a constitutional violation would require a showing that the penalty is so disproportionate to the offense as to "shock[] the conscience and offend[] fundamental notions of human dignity." (*People v. Dillon* (1983) 34 Cal.3d 441, 478.) Appellant's crime of premeditated shooting of an unarmed person at point-blank range as his victim begged for his life is hardly a good candidate for a cruel and unusual punishment finding, particularly when appellant was sentenced to life in prison without parole, rather than death.

favorable to appellant would have been obtained. (*People v. Watson*, *supra*, 46 Cal.2d at p. 836; see *Elliott, supra,* 70 Cal.App.3d at p. 998 [while the defendant had the constitutional right to represent himself, once that right was exercised, he was accorded all that the Constitution requires. His desire to change his mind and relinquish self-representation at the time of trial, is not guaranteed by the Constitution but is controlled by the trial court's discretion].) Here, any error was harmless even under the *Chapman* standard. (*Chapman v. California* (1967) 386 U.S. 18, 24.) As stated above, the trial was over and appellant's sentencing fate was sealed by the special circumstance finding. There was virtually nothing that could be done to reduce the sentence that he received.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.